IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

No. 73-1653

ROY W. ENSLOW,
Petitioner,

vs.

ARTHUR JEROME WATSON,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of Colorado

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IN THE

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OCTOBER TERM 1974

No.

ROY W. ENSLOW,
Petitioner.

vs.

ARTHUR JEROME WATSON,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of Colorado

Petitioner, the Sheriff of Fremont County, Colorado, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Colorado entered in the above-entitled matter on January 14, 1974.

OPINION BELOW

The opinion of the Supreme Court of the State of Colorado remanding the cause to the District Court with orders to make the writ of habeas corpus absolute is set out in Appendix B and is reported as *Watson* v. *Enslow* (1974) ____ Colo. ____, 517 P.2d 1346. The order denying a rehearing is set out in Appendix C.

JURISDICTION

The opinion of the Supreme Court of the State of Colorado issued on January 14, 1974. Petitioner's timely application for rehearing was denied on February 4, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3) and Rule 22 of the Revised Rules of the Supreme Court of the United States.

QUESTION PRESENTED

Whether under the facts of this case the Governor of the State of Colorado lacked authority to issue the warrant of arrest and rendition which this petitioner was ordered to execute because the Governor of Colorado previously failed to fulfill his promise to the Governor of California to return Arthur Jerome Watson to that State after completion of prosecution in the State of Colorado.

STATUTES INVOLVED

The constitutional and statutory provisions involved are set forth in Appendix A. They are:

Colorado Revised Statutes 1963, 60-1-5

United States Code, 18 U.S.C. § 3182.

United States Constitution, Article IV, Section 2, Clause 2

STATEMENT

HISTORY OF THE CASE

In 1956, Arthur Jerome Watson was serving a California prison sentence for Robbery in the first degree with four prior felony convictions. In November of

that year, he escaped and was involved in a murder in the State of Colorado. In January of 1957, before being apprehended by Colorado authorities, he was returned to California where he was convicted on new charges of robbery in the first degree and escape. Later in 1957, he was extradited to Colorado to face prosecution on the murder charge. This extradition was accomplished pursuant to a requisition by the Governor of Colorado as supplemented by an agreement by the Colorado Governor to return Mr. Watson to California at the expense of the State of Colorado after completion of the Colorado prosecution, provided that the death penalty was not imposed.

Following Mr. Watson's transfer to the State of Colorado, he was convicted of murder in the first degree and was sentenced to death. This conviction was reversed by the Colorado Supreme Court in 1960 and the cause was remanded for retrial. That case is reported as *Kostal* v. *People* (1960) 144 Colo. 505, 357 P.2d 70. On retrial, Mr. Watson was again convicted and was sentenced to life imprisonment. This conviction was affirmed in 1964 in a decision reported as *Watson* v. *People* (1964) 155 Colo. 357, 394 P.2d 737. Mr. Watson was not returned to the State of California at this time. Subsequently, in 1972, the Governor of Colorado commuted Mr. Watson's sentence to a term of twenty-three years to life and Mr. Watson was paroled to a California detainer. Later in 1972, the Governor of California formally demanded Mr. Watson's return to California. Pursuant to that de-

mand, the Colorado Governor issued a warrant of arrest and rendition and ordered your petitioner to deliver custody of Mr. Watson to a designated California agent.

Thereafter, Mr. Watson filed a petition for habeas corpus seeking release from custody under the Governor's warrant. On January 14, 1974, the Colorado Supreme Court granted Mr. Watson the relief prayed for and remanded the cause to the District Court with orders to make the writ absolute. Petitioner's application for a rehearing was denied on February 4, 1974.

REASON FOR GRANTING THE WRIT

Colorado Revised Statutes 1963, 60-1-5 Does Not And Cannot Limit The Authority Of The Governor To Honor The Demand Of The Governor Of California For The Arrest And Rendition Of A Fugitive From The Justice Of That State.

It is the petitioner's contention that the Supreme Court of the State of Colorado has interpreted Colorado Revised Statutes 1963, 60-1-5 in a way that is inconsistent with the United States Constitution and relevant federal statutes implementing those Constitutional provisions, and that the opinion has a direct, adverse and improper effect on the relations between States.

Under Colorado Revised Statutes 1963, 60-1-5. (Appendix A) the Governor of Colorado is authorized to enter into an executive agreement with the Governor of another state in order to secure the presence for trial of a fugitive from the justice of Colorado who is imprisoned in the asylum state. Under that section, the Governor is authorized to promise as a condition

of extradition, that the fugitive will be returned to the asylum state at the expense of the State of Colorado as soon as the prosecution in Colorado has been completed.

In the present case, the Governor of Colorado made such a promise to the Governor of California in order to accomplish the rendition to Colorado of Arthur Jerome Watson, a California prisoner serving consecutive sentences for robbery in the first degree and escape. The specific and pertinent language of that promise is as follows:

> "IT IS HEREBY AGREED by the undersigned, Governor of the State of Colorado, that in the event said Arthur Jerome Watson . . . shall be acquitted or shall receive a sentence of less than death following a trial in the courts of the State of Colorado, or the prosecution in the State of Colorado is otherwise terminated, said Arthur Jerome Watson . . . will be returned to the State of California at the expense of the State of Colorado, and that the Governor, or other acting executive authority of this state, will upon demand of the executive authority of the State of California surrender said Arthur Jerome Watson . . . to the duly authorized agents of the State of California." (Exhibit B at p.2).

Notwithstanding the above promise, when prosecution in Colorado was completed in 1964 with the imposition of a life sentence, the fugitive was not returned to the State of California. Subsequently in 1972, the State of California through its Governor, made a formal demand upon the Governor of Colo-

rado for the return of Arthur Jerome Watson to complete his California sentences. However, when the warrant issued pursuant to that demand was challenged in a petition for habeas corpus, the Colorado Supreme Court held that the failure of the Colorado Governor to fulfill his promise under the executive agreement now deprives him of authority to issue the warrant. The Court did not provide that anyone else in the State of Colorado had that authority nor did it indicate under what conditions the Governor's authority might be revived.

It is generally recognized that the interstate extradition of criminals is controlled by federal law since it is provided for directly in the United States Constitution, Article IV, Section 2, and by the implementing legislation, 18 U.S.C. Section 3182, (Appendix A) and while the States may allow extradition on terms less exacting than those provided by federal law, they cannot place limitations on the Constitutional duty of a Governor to honor the demand for extradition by a sister state. See *Smith* v. *Idaho* (1967) 373 Fd.2d 149; *Walden* v. *Mosley* (1970) 312 F.Supp. 855, 859; *In re Morgan* (1966) 244 Cal.App.2d 903; *Matochik* v. *Baker* (1953) 306 N.Y. 32; *Ex Parte Riccardi* (1949) 68 Ariz. 180; *Bishop* v. *Jones* (1949) 207 Miss 423; *Spiah* v. *Seay* (1946) 185 Va. 710; *State* v. *Parrish* (1941) 242 Ala. 7; *LaRue* v. *Meyering* (1934) 357 Ill. 166.

Article IV, Section 2, Clause 2 (Exhibit A) of the United States Constitution provides:

> "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

As this Court noted in *Appleyard* v. *Massachusetts* (1906) 203 U.S. 222, 227:

> "The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several States—an object of the first concern to the people of the entire country, and which each State is bound, in fidelity to the Constitution, to recognize."

When a demand is made upon the Governor of a State, it becomes the duty of that Governor to cause the fugitive to be arrested and surrendered to the demanding State. *McNichols* v. *Pease* (1907) 207 U.S. 100, 108. As noted by the California Supreme Court many years ago:

> "Upon this very subject of the surrender of fugitives from justice fleeing from one State or nation to another, under the rules of international law, it has been a question very fully and ably discussed by public writers, whether such surrender was a matter of right and duty, or merely of comity. (Story on Conflict of Laws, Secs. 626–628). This was deemed too important a question to leave unsettled, and the framers of our National

> Constitution wisely inserted the clause referred to, making it no longer a matter of mere comity, subject to the pleasure of each State, but an absolute right and duty."

In Matter of Romaine (1863) 23 Cal. 585, 589–590; See also *Kentucky* v. *Dennison* (1860) 65 U.S. 66, 76; *Biddinger* v. *Commissioner* (1917) 245 U.S. 128.

Thus, the United States Constitution not only provides for the authority to participate in extradition proceedings (Cf. *Ex Parte Morgan* (1883) 20 Fd. 98) but, more importantly, it defines and renders absolute the rights and obligations of states which are party to the Union. In a very real sense, the duty of a Governor to render up fugitives upon demand is a condition of Statehood. The opinion of the Colorado Supreme Court thus has the effect of allowing the Governor of this State or any state having similar statutory provisions[1] to unilaterally discharge that condition of statehood and to frustrate and defeat its concomitant rights and obligations. Stated another way, the Colorado Supreme Court has provided that a state statute, in this case Colorado Revised Statutes 1963, 60-1-5, can effectively place limitations and conditions upon the authority of a Governor in extradition proceedings beyond those imposed in the United States Constitution or Federal Statutes.[2] This is

---

[1] The provision concerning the authority of a Governor to enter into an executive agreement is a part of the Uniform Criminal Extradition Act and has been adopted by most states.

[2] At page 5 of the Court's opinion (Appendix B), the Court stated: "As we view this statute and its predecessor, C.R.S. '53, 60-1-5, which was identical in every respect, it is both a grant *and limitation* of executive authority." (Emphasis added.)

clearly contrary to the well recognized principles outlined above, and petitioner submits that it is detrimental to the preservation of the Union.

Finally, it is important to a proper consideration of this petition to note that the decision of the Colorado Supreme Court rests wholly on its finding that the Governor lacked authority to honor California's demand. The matter of a Governor's "discretion" to reject a demand for extradition was not in issue, nor was there any question concerning the validity of the demand itself. Cf. *Kentucky* v. *Dennison, supra.*

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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EXHIBIT A

EXHIBIT A

Colorado Revised Statutes 1963, 60-1-5

60-1-5. Extradition of persons imprisoned or awaiting trial.—(1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 60-1-23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

UNITED STATES CONSTITUTION,
ARTICLE IV, Section 2, Clause 2

"A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

UNITED STATES CODE
18 U.S.C. § 3182

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of arrest, the prisoner may be discharged."

EXHIBIT B

No. 25750

ARTHUR JEROME WATSON,
Petitioner-Appellant,

v.

ROY W. ENSLOW, *Sheriff,*
Fremont County, Colorado,
Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF THE COUNTY OF FREMONT

En Banc

JUDGMENT REVERSED AND CAUSE REMANDED WITH DIRECTIONS

Honorable Howard E. Purdy, Judge

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MR. JUSTICE DAY delivered the opinion of the Court.

This is an appeal from the denial of petitioner Watson's request for habeas corpus, C.R.S. 1963, 60-1-10.

The matter arises because of an extradition request by the State of California. The facts are as follows: Petitioner Watson was serving a California prison sentence in 1957. He escaped to Colorado and was involved in a murder. He returned to California before being apprehended by Colorado authorities and was reincarcerated in the California prison. In late 1957, petitioner was extradited to Colorado from California to stand trial for the murder charge. That extradition was accomplished through an executive agreement between the Governors of California and Colorado. The agreement provided in pertinent part:

> "IT IS HEREBY AGREED by the undersigned, Governor of the State of Colorado, that *in the event said Arthur Jerome Watson * * * shall be acquitted or shall receive a sentence of less than death following a trial in the courts of the State of Colorado,* or the prosecution in the State of Colorado is otherwise terminated, said Arthur Jerome Watson * * * *will be returned to the State of California* at the expense of the State of Colorado, and that the Governor, or other acting executive authority of this state, *will upon demand of the executive authority of the State of California surrender* said Arthur Jerome Watson * * * to the duly authorized agents of the State of California." (Emphasis added.)

Upon the completion of his extradition to Colorado, petitioner was tried on a charge of first-degree murder. He was convicted. We reversed that conviction and remanded the case for retrial. *Kostal v. People*, 144 Colo. 505, 357 P.2d 70 (1960). On retrial,

petitioner was again convicted and sentenced to life imprisonment. We affirmed. *Watson v. People*, 155 Colo. 357, 394 P.2d 737 (1964). This sentence of "straight life" was subsequently commuted to 23 years to life and parole was granted in 1972. Petitioner's parole was abruptly interrupted by an extradition request from California. It was filed more than eight years after petitioner's Colorado appellate proceedings were terminated, and alleged that petitioner was a fugitive from justice in California whose return was mandated by § 2 of the Uniform Criminal Extradition Act, C.R.S. 1963, 60-1-2. The Governor of this state issued a warrant for petitioner's arrest, C.R.S. 1963, 60-1-7, and petitioner was taken into custody by the respondent, Sheriff of Fremont County. Petitioner sought habeas corpus relief, C.R.S. 1963, 60-1-10, in the district court. It was denied after a full hearing and petitioner appealed to this court. We reverse the district court, make the writ absolute and order that petitioner be discharged.

I.

At the outset, it is important to note that, despite the fact that California's request for extradition invokes § 2 of the Uniform Criminal Extradition Act, C.R.S. 1963, 60-1-2, this case involves an executive agreement between two states, and is therefore controlled by § 5 of the Uniform Criminal Extradition Act, C.R.S. 1963, 60-1-5. Section 5 was specifically designed to deal with the problem of extraditing and returning those prisoners who are already in the custody of the authorities of another state by reason of imprisonment or awaiting trial. Commissioner's Note, § 5 *Uniform Criminal Extradition Act*, 9 U.L.A. 296 (1957); *cf. In Re Whittington*, 34 Cal. App. 344.

167 P. 404 (1917). We note further that we limit our opinion in this case to an interpretation of the authority of our executive under our statutes, and intimate no view regarding the scope of the authority of the executive of our sister state of California.

II.

Petitioner's removal from California as well as his present extradition to California from this state are governed by § 5 of the Uniform Criminal Extradition Act, C.R.S. 1963, 60-1-5:

> "*Extradition of persons imprisoned or awaiting trial.*—(1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, *the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.*
>
> "(2) The governor of this state may also *surrender on demand* of the executive authority of any other state any person in this state who is charged in the manner provided in section 60-1-23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily." (Emphasis added.)

The executive agreement which brought petitioner to Colorado in the first instance was authorized by the

quoted section of the statute. That agreement, of course, set forth the course of conduct for both parties. The statute, however, sets forth the course of conduct which the Colorado governor must follow. As we view this statute and its predecessor, C.R.S. '53, 60-1-5, which was identical in every respect, it is both a grant and limitation of executive authority. The governor of this State was authorized to enter into the executive agreement with California for the return of petitioner Watson, C.R.S. 1963, 60-1-5(1). His surrender could be made to that state, *id.* (2). This grant of authority is addressed to the governor's discretion, for it is couched in language which is permissive not mandatory. *Thompson v. Bannan,* 298 F.2d 611 (6th Cir. 1962). Once having exercised that discretion, however, the power and duties of the Colorado executive are governed by the terms of the statute. As is evident from a reading of the statute, the power of the governor to make surrender and return is limited by that portion of the statute which reads: "upon condition that such person be returned to such other state * * * as soon as the prosecution in this state is terminated."

As the recitation of the facts reveals, the surrender to the executive in California which the statute contemplates was not made at the time petitioner's Colorado proceedings were terminated, *Watson v. People,* 155 Colo. 357, 394 P.2d 737 (1964), but rather, eight years after that time. We are presented, therefore, with the narrow issue of whether, where an executive agreement based on C.R.S. 1963, 60-1-5 has been made, the failure to return Watson according to the terms of the statute limits the authority of our executive to make surrender at a later date. We answer the question in the affirmative.

III.

The question presented by petitioner is a novel one. The cases cited by the People in their brief rebut the doctrine of waiver as applied to the situation here. The only applicable case which the petitioner cites holds that, when the governor of the state of origin does not make timely demand, that state has waived its jurisdiction. *People ex rel. O'Connor* v. *Bensinger*, ------ Ill.2d ------, 270 N.E.2d 1 (1971). These cases are of little assistance. As we view this issue, the controlling principles apply only to the acts of the Colorado governor, and not to the question of jurisdiction or waiver of the State of California.

IV.

The legislative history of the clause requiring that return be made "as soon as the prosecution in this state is terminated" provides no guidance on the meaning and purposes of the clause. *Uniform Criminal Extradition Act* § 5, 9 U.L.A. 295–96 (1957). Nevertheless, we are called upon to decide the issue.

As we view the section under scrutiny, it is meant to serve several purposes for both the interests of the government and the constitutional rights of the defendant. Firstly, the provision placing the expense on Colorado of returning the prisoner to the state from which he has been taken is in lieu of the savings in cost for the prisoner's retention in this state and guarantees that these costs are kept to a minimum. This is an affirmative duty that the legislature has imposed in the executive. See also C.R.S. 1963, 60-1-12. Secondly, the clause is clearly intended to provide a standard to the state of origin, informing that state as to the proper time for demand. The statute also

makes it obvious that the executive could not make return before the prosecution proceedings are terminated. Thirdly, therefore, the clause gives the governor of Colorado a standard for determining when a demand for return is both timely and proper. *Cf.* C.R.S. 1963, 60-1-4. These are the governmental interests which are furthered by the statute.

The protection of prisoner interests is discernible from the holdings of some federal courts as well as a common sense consideration of the impact of "passing around" prisoners from one jurisdiction to another, *e.g., Shields v. Beto*, 370 F.2d 1003 (5th Cir. 1967). Prisoners who have been extradited from states where they are already imprisoned incur an interruption of the service of their sentences. As the court said in *White v. Pearlman*, 42 F.2d 788 (10th Cir. 1930), such prisoner should not be required to serve his sentence piece-meal. His return as speedily as the completion of proceedings will permit, on the other hand, may be necessary to enable him to pursue any post-conviction remedies which were interrupted or suspended by his extradition to this state. Then again, he may be able to secure credit from Colorado for the time he serves in the prison system of the state of origin. *See Alire v. People*, 171 Colo. 228, 466 P.2d 78 (1970).

On the facts revealed by petitioner's counsel—not disputed by the People—the effect of the failure to return this petitioner to California when his Colorado proceedings were terminated illustrates how disregard for the mandate of this section can have serious consequences. Petitioner's appeal of his California conviction on which he was being held was dismissed for failure to pursue it to completion. Also, while Colorado would perhaps be willing to give this petitioner credit

against his Colorado sentence for the time he would have served in California had he been promptly returned (*See Alire v. People, supra*), California does not allow credit for the eight years he has served in this state. *In Re Gullatt*, 69 Cal.2d 395, 445 P.2d 292, 71 Cal. Rptr. 676 (1968).

The legal authority of Colorado's governor to make the requested surrender and return at this late date is beyond the authority provided both in the statute and the agreement. The arrest warrant being without the governor's authority, it follows that the respondent, Sheriff of Fremont County, has no legal authority to hold petitioner.

The judgment of the district court is reversed. The cause is remanded to said court to make the writ of habeas corpus absolute and to release the petitioner.

MR. CHIEF JUSTICE PRINGLE does not participate.

EXHIBIT C

CLERK'S OFFICE

SUPREME COURT

STATE OF COLORADO

DENVER 80203

February 4, 1974

Case No. 25750

Watson

v.

Enslow

The Honorable John P. Moore,
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Mr. Rollie R. Rogers,
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1575 Sherman Street,
Denver, Colorado. 80203.

Gentlemen:

The following proceedings were this day had by the court today:

The petition for rehearing was denied.
Remittitur issued.

Yours very truly,
RICHARD D. TURELLI, *Clerk.*
By FLORENCE WALSH
Deputy Clerk

JUL 27 1974

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

No. 73-1653

ROY W. ENSLOW,
Petitioner,

vs.

ARTHUR JEROME WATSON,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF OF THE STATE OF CALIFORNIA AMICUS CURIAE IN SUPPORT OF PETITIONER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

No. 73-1653

ROY W. ENSLOW,
Petitioner,

vs.

ARTHUR JEROME WATSON,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF OF THE STATE OF CALIFORNIA AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE

The State of California has a direct and substantial interest in this case for two important reasons. First, the order of the Colorado Supreme Court effectively and, it appears, permanently bars this State from securing the return of a fugitive from the justice of the State of California. Second, the Colorado court's ruling has the effect of elevating state law over both the United States Constitution and federal statutes

implementing the pertinent constitutional provisions. If, as contended by petitioner and fully supported by the State of California, the duty of a Governor to render up fugitives upon demand is a basic and absolute constitutional condition of statehood, then no state may enact laws which limit that duty.

The opinion of the Colorado Supreme Court construes a Colorado statute in such a way as to limit the power of the Colorado Governor in extradition matters by holding that the failure of that Governor to fulfill his promise to return the fugitive to California after prosecution vitiates his authority to honor a formal demand by California for the fugitive's return. Authority is an essential ingredient of duty. Thus, the Colorado court has provided that a state may enact a law which limits and, as in this case, may operate to absolve a duty prescribed by the United States Constitution.

It is incumbent upon all states to seek to preserve and protect the integrity of the constitution. The United States consists of semiautonomous states bound together under one constitution which prescribes the various rights and duties of the states in relation to each other. To allow any state to elevate its own law above the Constitution and to so unilaterally absolve itself of a constitutional duty to sister states would be to signal the dissolution of that bond which holds the Union together.

For these reasons, the State of California joins the State of Colorado in urging this Court to vacate

the opinion of the Supreme Court of the State of Colorado and to further provide that no state may limit the duty of its Governor to honor the lawful requisition of the Governor of a sister state for the return of a fugitive from justice.

ARGUMENT

The matter of respondent's extradition is governed by federal law, and Section 5 of the Uniform Criminal Extradition Act cannot be construed to limit the constitutional duty or authority of a governor to honor a demand for extradition submitted by a sister state.

Section 5 of the Uniform Criminal Extradition Act was added in 1936 and provides:

> "When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this state may agree with the Executive Authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.
>
> "The Governor of this state may also surrender on demand of the Executive Authority of any other state any person in this state who is charged in the manner provided in Section 23 of this act with having violated the laws of the state whose Executive Authority is making the demand, even though such person left the demanding state involuntarily."

In Colorado, that section is embodied in Colorado Revised Statutes 1963, 60-1-5, which is set forth in Exhibit A attached to the Petition. In California, Section 5 was adopted as Penal Code section 1549, which is set forth in Exhibit 1 attached to this brief. The Uniform Criminal Extradition Act or its equivalent has been adopted by virtually every state.

As Petitioner notes, the Colorado Supreme Court has construed Section 5 of the Uniform Criminal Extradition Act as both a grant and a limitation of the authority of its Governor to honor California's demand for the return of the respondent. In other words, the Court has construed Section 5 as conferring a power upon the Governor which would not otherwise exist, and it is in the grant of that new authority that the court found a limitation on the power conferred.

The Constitution provides that it is the duty of the chief executive of any state to render up a fugitive from the justice of a sister state upon the demand of the chief executive of the State from which he departed. Constitution, Article II, Section 4, Clause 2.[1] Congress has provided enabling legislation in Title 18, United States Code, section 3182,[2] since it has been held that the constitutional provision is not self-executing. *Roberts* v. *Reilly* (1885) 116 U.S. 80; *United States ex rel. Silver* v. *O'Brien* (1943) 138 F.2d 217, *cert. denied* 321 U.S. 766.

[1] Set forth in Exhibit A of the Petition.
[2] Set forth in Exhibit A of the Petition.

It is well established that insofar as the federal law applies, it controls the extradition of fugitives, and while states may allow extradition on terms less exacting than those provided in the federal law, they may not impose higher standards than those required by federal law. *Smith* v. *Idaho* (1967) 373 F.2d 149; *Walden* v. *Mosley* (1970) 312 F.Supp. 855, 859.[3] Since federal law controls only insofar as its scope permits, it is clear that states are free to enact supplementary extradition legislation which contemplates the interstate rendition of persons not otherwise covered by federal law. In such situations, state legislation would truly be both a grant and a limitation of executive authority.

The question presented in the present petition is the source of a Governor's power to render up a prisoner of the demanding state who has been released to the custody of the asylum state for the express and limited purpose of trial in the asylum state. If such a person would not be extraditable under the federal law, then Section 5 of the Uniform Criminal Extradition Act would be an expansion of the extradition law, and the Colorado courts could properly construe the scope of the authority conferred. However, if, as contended by the Petitioner and fully supported by the State of California, such a person is extraditable under federal law, then Section 5 cannot be applied to limit the constitutional duty of a Governor to render up a fugitive from justice.

[3] See also other cases cited by Petitioner at page 6 of the Petition.

Article IV, Section 2, Clause 2, of the United States Constitution provides:

> "A person charged in any State with treason, felony, or other crime, *who shall flee from justice, and be found in another State,* shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." (Emphasis added.)

The enabling legislation, 18 U.S.C. section 3182, expressly applies "[w]henever the executive authority of any State or Territory demands any person as a *fugitive from justice* . . . ." (Emphasis added.) It is clear that the Constitution and enabling legislation apply only to persons classified as "fugitives from justice."

The Colorado Supreme Court did not expressly determine whether respondent Watson was a fugitive from justice within the meaning of the Constitution. Instead, the Colorado Court merely held that Section 5 of the Uniform Criminal Extradition Act controlled the case.

The people of the State of California contend that respondent Watson is a fugitive from the justice of this State and that his return to California is thus governed by the Constitution and federal law, and not by Section 5 of the Uniform Criminal Extradition Act. As indicated both in the Petition and in the Colorado Supreme Court opinion, respondent Watson was a California inmate at the time he was extradited

to Colorado to stand trial on charges pending in that State. His release to Colorado was conditioned upon a promise by the Governor of Colorado to return him to California following prosecution. That promise on behalf of the State of Colorado was authorized by Section 5 of the Uniform Criminal Extradition Act, enacted by Colorado in Colorado Revised Statutes 1960, 60-1-5.

The definition of the word "fugitive" as used in the Constitution, Article IV, Section 2, and in 18 U.S.C. 3182, has been broadly set by both federal and state courts. In *Appleyard* v. *Massachusetts* (1906) 203 U.S. 222, 227, this court provided:

> ". . . the simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he *consciously* fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding State. A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime leaves the State—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, and if found in another State must be delivered up by the Governor of such State to the State whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the Governor of the State

> from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any State. . . ."

This court has never limited that basic definition. See *McNichols* v. *Pease* (1907) 207 U.S. 100, 108; *Drew* v. *Thaw* (1914) 235 U.S. 432, 439; *Innes* v. *Tobin* (1915) 240 U.S. 127, 131; *Biddinger* v. *Commissioner* (1917) 245 U.S. 128, 133; *Hogan* v. *O'Neill* (1920) 255 U.S. 52, 56. In fact, in *Bassing* v. *Cady* (1908) 208 U.S. 386, 392–393, this Court further stated that one is subject to extradition even though he left the state with the knowledge of, or without objection by, the authorities of the demanding state. See *United States ex rel. Tyler* v. *Henderson* (1971) 453 F.2d 790, 793.

From the foregoing, it is apparent that one is a "fugitive from justice" within the meaning of the Constitution and Federal law regarding extradition whenever it appears that he committed a crime while present in the demanding state and that he thereafter left that state. In the present case, respondent Watson was convicted of an offense in the State of California and was serving a sentence therefor at the time of his extradition to Colorado. Under the principles noted above, respondent is clearly a fugitive from Justice[4] unless the fact of his departure from California pursuant to the compulsion of legal process, Colorado's extradition, somehow changes his status.

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[4] See *Fowler* v. *Ross* (1952) 196 F.2d 25, 35 (the underlying charge is not swallowed up by the conviction).

It does not appear that this Court has ever squarely addressed the question of whether voluntary departure from the demanding state is an essential ingredient of fugitivity. See *United States ex rel. Moulthrope* v. *Matus* (1954) 218 F.2d 466, 468. However, other courts have held that the removal of a person from the demanding state under the compulsion of legal process does not affect his status as a fugitive for purposes of extradition, and it appears that this Court has repeatedly declined to review those decisions whenever review was sought. *Brewer* v. *Goff* (1943) 138 F.2d 710, 712; *Spencer* v. *Hamilton* (1926) 12 F.2d 976; *Knott* v. *State* Okl.Cr. 1963, 387 P.2d 142; *Fernbaugh* v. *Hurt,* Okl.Cr. 1960, 354 P.2d 787, *cert. den.* 364 U.S. 873; *Application of Butler* (1959) 346 P.2d 348, *cert. den.* 363 U.S. 846; *Golla* v. *State* (1960) 159 A.2d 585 *cert. den.* 364 U.S. 841; *Commonwealth ex rel. Rushkowski* v. *Burke* (1952) 171 Pa.Super. 1, *cert. den.* 345 U.S. 919; *Ex Parte Martin* (1935) 142 Kan. 907; *People ex rel. McFadden* v. *Meyering* (1934) 358 Ill.442; *State ex rel. Shapiro* v. *Wall* (1932) 187 Minn. 246. Moreover, federal cases have upheld the right of a state to command the return of an inmate removed by federal authorities pursuant to a writ of habeas corpus ad prosequendum. *Derengowski* v. *United States* (1968) 404 F.2d 778, 781–782 *cert. den.* 394 U.S. 1024.

It is reasonable that a person involuntarily removed from the demanding state is nevertheless a fugitive within the meaning of the Constitution. It

is well settled that the purpose of the extradition clause of the Constitution was to serve the prompt and efficient administration of justice by dissolving the boundaries between states. *Appleyard* v. *Massachusetts, supra,* at 227; *Smith* v. *State of Idaho* (1967) 373 F.2d 149, *cert. den.* 388 U.S. 919; *Ex Parte Morgan* (1948) 78 F.Supp.756, affirmed 175 F.2d 404, *cert. den.* 338 U.S. 827. It was to eliminate the de facto immunity from prosecution created when one sovereign grants asylum to a fugitive from the justice of another sovereign. Although his comments did not directly refer to extradition, Mr. Chief Justice Taft's remarks in *Ponzi* v. *Fessenden* (1922) 258 U.S. 254, 260, are appropriate to consideration of the present petition:

> "One accused of crime has a right to a full and fair trial according to the law of the government whose sovereignty he is alleged to have offended, but he has no more than that. He should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial. He may not complain if one sovereignty waives its strict right to exclusive custody of him for vindication of its laws in order that the other may also subject him to conviction of crime against it. *In re Andrews,* 236 Fed. 300; *United States* v. *Marrin,* 227 Fed. 314. Such a waiver is a matter that addresses itself solely to the discretion of the sovereignty making it and of its representatives with power to grant it.

> "One accused of crime, of course, can not be in two places at the same time. He is entitled to be present at every stage of the trial of himself in each jurisdiction with full opportunity for defense. *Frank* v. *Mangum,* 237 U.S. 309, 341; *Lewis* v. *United States,* 146 U.S. 370. If that is accorded him, he can not complain. The fact that he may have committed two crimes gives him no immunity from prosecution of either."

In the present case, the State of California waived its right to exclusive jurisdiction over the respondent in order that the State of Colorado might try him on serious charges pending in that state. California clearly did not intend to waive its jurisdiction to eventually satisfy its judgment against Mr. Watson, since Mr. Watson was released to the temporary custody of Colorado only after the Colorado Governor gave written assurance that respondent would be returned after trial.[5] See *In re Patterson* (1966) 64 Cal.2d 357, 363, 411 P.2d 897. Mr. Watson should not be allowed to contest his return to California simply because the Governor of Colorado failed to fulfill his promise to the State of California. If his return had been immediately after his Colorado conviction, that return would have been governed by the Executive Agreement and would have been summary in nature. *Boag* v. *Boies* (1972) 455 F.2d 467, 468. The failure of the Governor of Colorado to return him as promised gives the respondent no greater right to exemption from the jurisdiction of Cali-

[5] See Petition, page 5, for the specific language of that promise.

fornia that he would have had otherwise. His unauthorized absence from the State of California renders him a fugitive from the justice of this state, and, as such, extraditable.

Petitioner has noted in its brief that the duty of a Governor to render up fugitives on demand is constitutionally mandated and that no action on the part of the Governor of Colorado could discharge that duty. The State of California fully supports that position. As this Court noted in *Appleyard* v. *Massachusetts*, *supra*, at page 227: "Such is the command of the supreme law of the land, which may not be disregarded by any state." The duty prescribed in the Constitution is a duty to sister states, for it is in the nature of a treaty stipulation between sovereignties. *Id.* While it may be true that no force exists to compel one sovereign state to honor the demand of another (*Kentucky* v. *Dennison* (1860) 65 U.S. 66), it is clear that when a Governor wishes to honor his constitutional duty to a sister state, he has authority to do so. To hold otherwise would be to render the duty meaningless.

It should be noted that the views expressed above serve the best interests of the individual as well as those of the states. It is apparent that one of the greatest contributions of Section 5 of the Uniform Criminal Extradition Act was to provide the machinery by which to extend the speedy trial protection of the Sixth Amendment to individuals incarcer-

ated in another jurisdiction.[6] Comity requires sister states to give full faith and credit to the promises of a Governor under Section 5. Similarly, by according full faith and credit, the state having primary jurisdiction over the prisoner can temporarily give up its exclusive control over him without fear that its efforts to return the prisoner will be frustrated by the demanding state, since the promising Governor has lawfully committed the resources of his state to the return of the prisoner after trial. Unhesitating reliance upon the commitment of the demanding state clearly serves the speedy disposition of charges, a process which benefits both the individual and the people of the charging state. To hold that the failure of the charging state to fulfill its commitment now deprives that state of all authority to honor a demand for the prisoner's return, obviously has a chilling effect on the willingness of the state with primary jurisdiction to relinquish its exclusive control so as to allow a speedy disposition of

[6] The Agreement on Detainers embodies virtually the same promise on the part of the charging state as that contemplated by Section 5 of the Uniform Criminal Extradition Act. The Agreement has been adopted in California as Penal Code Section 1389, set forth in Exhibit 2, and in Colorado as Colorado Revised Statutes Chapter 74, Section 1701 et seq. By its terms, the Agreement on Detainers is designed to "encourage the expeditious and orderly disposition of such charges...." (Article I). Because the Agreement on Detainers covers virtually the same situation as contemplated by Section 5 of the extradition act, and because it contemplates an administrative rather than an executive transfer, states which are party to the Agreement on Detainers do not generally utilize Section 5 of the Uniform Criminal Extradition Act in order to secure temporary custody of a prisoner for purposes of trial.

criminal charges. It is submitted that the desire to afford a speedy trial on criminal charges pending in a sister state is a positive goal for an enlightened society, and that the decision of the Colorado Supreme Court impedes the realization of that goal and is detrimental not only to the relations between states, but to the equally, if not more important rights of the individual as well.

CONCLUSION

For the foregoing reasons, the State of California as amicus curiae on behalf of petitioner herein, respectfully requests this Court to vacate the decision of the Colorado Supreme Court.

Respectfully submitted,

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APPENDIX

EXHIBIT 1
CALIFORNIA PENAL CODE

§1549. [Agreement for return to this state of person imprisoned or held in another: Conditions: Surrender of person who left other state involuntarily]

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another State, the Governor of this State may agree with the executive authority of such other State for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other State, upon the condition that such person be returned to such other State at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other State any person in this State who is charged in the manner provided in section 1548.2 of this code with having violated the laws of the demanding State even though such person left such demanding State involuntarily.

EXHIBIT 2

CALIFORNIA PENAL CODE

Section 1389. The agreement on detainers is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

The Agreement on Detainers

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have cause to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request

of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which

the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(c) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the pris-

oner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany

the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or

charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing

for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute re-

pealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Section 1389.1. The phrase "appropriate court" as used in this agreement on detainers shall, with reference to the courts of this State, mean the court in which the indictment, information, or complaint is filed.

Section 1389.2. All courts, departments, agencies, officers, and employees of this State and its political subdivisions are hereby directed to enforce the agreement on detainer and to co-operate with one another and with other states in enforcing the agreement and effectuating its purpose.

Section 1389.3. Nothing in this chapter or in the agreement on detainers shall be construed to require

the application of Section 644 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

Section 1389.4. Every person who has been imprisoned in a prison or institution in this State and who escapes while in the custody of an officer of this or another state in another state pursuant to the agreement on detainers is deemed to have violated Section 4530 and is punishable as provided therein.

Section 1389.5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this State to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainer. Such official shall inform such inmate of his rights provided in paragraph (a) of Article IV of the Agreement on Detainers in Section 1389 of this code.

Section 1389.6. The Administrator, Interstate Probation and Parole Compacts, shall administer this agreement.

Section 1389.7. When, pursuant to the Agreement on Detainers, a person in actual confinement under sentence of another jurisdiction is brought before a California court and sentenced by the judge to serve a California sentence concurrently with the sentence of the other jurisdiction, the Adult Authority and the California Women's Board of Terms and Parole, and the panels and members thereof, may meet in such other jurisdiction, or enter into cooperative arrangements with corresponding agencies in the other jurisdiction, as necessary to carry out the term-fixing and parole functions.

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